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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,428	07/27/2001	Charles C. Haluzak	10008368-1	1124

7590 02/17/2005

## HEWLETT-PACKARD COMPANY

Intellectual Property Administration

P.O. Box 272400

Fort Collins, CO 80527-2400

EXAMINER

CREPEAU, JONATHAN

ART UNIT

PAPER NUMBER

1746

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/917,428

Applicant(s)

HALUZAK, CHARLES C.

Examiner

Jonathan S. Crepeau

Art Unit

1746

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 01 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

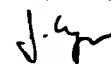
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): rejection of claims 4 and 13, 18-22.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 18-25.  
Claim(s) objected to: 4 and 11-13.  
Claim(s) rejected: 1-3, 5-10 and 14-17.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
Jonathan Crepeau  
Primary Examiner  
Art Unit: 1746

Continuation of 3. NOTE: The proposed amendment to claim 1 has been considered but does not appear to contain the language of original claim 11. This language is believed to be critical because proposed claim 1 now reads on a stack of single fuel cells. As noted below, the allowability of the claimed invention lies in a plurality of elongate fuel cells formed in the same substrate. Proposed claim 1 does not recite this. It is noted that claims 4 and 13 do recite this, however, and are considered to be allowable. Regarding proposed claim 1, it is further noted that the last clause of the claim is identical to the clause at line 18 of the claim and is therefore redundant (it is presumed that the last clause attempts to incorporate the language of claim 11, but in fact uses the terms "first" and "second" which were not used in original claim 11). It also noted that claim 10 has not been incorporated into claim 1 verbatim. Also, in claim 12, "the said" in line 2 should be corrected. In any event, it is suggested that either claim 4 or 13 be incorporated into claim 1, with care taken that the resulting claims clearly and distinctly point out the relationships of all the fuel chambers (i.e., "first" and "second" chambers that are in fluid communication between mating substrates, or the chambers of respective fuel cells being fluidly connected within the same substrate). Applicant's attorney is encouraged to contact the Examiner if there should be any questions regarding the above.

Continuation of 11. does NOT place the application in condition for allowance because: Regarding the merits of Applicant's arguments, they are persuasive with regard to claim 18 but not persuasive with regard to claim 14. Applicant has sufficiently shown the criticality of a plurality of elongate fuel cells formed in the same substrate. However, claim 14 merely requires a single fuel cell. As such, Figure 8 of Jankowski is the closest prior art to the claim, not the apparatus shown at Figure 1 of Applicant's specification. Figure 8 of Jankowski shows a single channel formed in two substrates. It is still believed that it would have been obvious to elongate or enlarge such channel as a matter of design choice. In the embodiment of Figure 8 of the reference, since only one channel is shown, there would be no consideration needed of how this channel interacts with other channels. Applicant states that "the non-elongate fuel cell designs illustrated in the Jankowski publication would present the same problems when a plurality of the fuel cells are employed." As such, the fact that applicant's invention concerns a plurality of fuel cells is a critical feature and should be recited in the independent claims.